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**MAILED**

FEB 08 2011

PCT LEGAL ADMINISTRATION

In re Application of	:	
OFER ADAN et al.	:	
Application No.: 10/544,122	:	DECISION ON PETITION
PCT No.: PCT/US03/38140	:	UNDER 37 CFR 1.137(b)
Int. Filing Date: 24 November 2003	:	
Priority Date: 05 February 2003	:	
Attorney Docket No.: 6317P028PCT	:	
For: A METHOD FOR MEASURING AND	:	
REDUCING ANGULAR DEVIATIONS	:	
OF A CHARGED PARTICLE BEAM	:	

This decision is in response to applicants' "Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b)" filed in the United States Patent and Trademark Office (PTO) on 27 August 2010.

**BACKGROUND**

On 24 November 2003, applicants filed international application PCT/US03/38140 which claimed a priority date of 05 February 2003. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 05 August 2005.

On 01 August 2005, applicants filed a Transmittal Letter for entry into the national stage accompanied, *inter alia*, by: the requisite basic national fee; a copy of the international application; and a preliminary amendment.

On 23 January 2006, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) along with a surcharge for providing the oath or declaration later than 30 months from the priority date was required. The notification set a two (2) month period for response.

On 08 September 2006, applicants filed "Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b)." In a decision dated 13 November 2006, applicants' petition under 37 CFR 1.137(b) was dismissed without prejudice.

On 15 March 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned.

On 27 August 2010, applicants filed "Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b)."

### DISCUSSION

37 CFR 1.137(b) permits the filing of a petition to revive an abandoned application where the abandonment resulted from an unintentional delay. A grantable petition under this section must include: (1) the required reply, unless previously filed; (2) the petition fee required by law; (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional;" and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c). Item (4) is not applicable.

As set forth in the decision mailed 13 November 2006, the original petition for revival was dismissed because applicant had failed to provide the "required reply" of the submission of the declaration of the inventors which complies with 37 CFR 1.497(a) and (b). Accordingly, applicant's present submission is now sufficient to satisfy the "required reply" element of a grantable petition.

Counsel includes a statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional." However, it is not apparent from the present record that the entire delay was unintentional. Here, applicant failed to file a proper response to the Notification of Missing Requirements dated 23 January 2006. In addition, applicant failed to timely file the present renewed petition within the period set in the prior decision. In light of this pattern of failing to timely file the required replies, applicant must provide an explanation for the failure to timely file the required replies sufficient to establish that the entire delay in filing the present renewed petition was unintentional. (It is noted that the Office may require additional information if there is a question to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional. See Manual of Patent Examining §711.03(c)(III)(C) and (D).)

Based on the above, applicant has not satisfied all the requirements for a grantable petition for revival under 37 CFR 1.137(b).

### CONCLUSION

The petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice and the application remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, an appropriate response to this decision must be filed within **TWO (2) MONTHS** from the mail date of this

decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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